



Queensland

# **Police Powers and Responsibilities and Other Legislation Amendment Act (No. 2) 2023**

## **Act No. 11 of 2023**

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**An Act to amend the Drugs Misuse Act 1986, the Fire and Emergency Services Act 1990, the Penalties and Sentences Act 1992, the Police Powers and Responsibilities Act 2000, the Police Service Administration Act 1990, the Youth Justice Act 1992 and the legislation mentioned in schedule 1 for particular purposes**

**[Assented to 2 May 2023]**





Queensland

# Police Powers and Responsibilities and Other Legislation Amendment Act (No. 2) 2023

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**The Parliament of Queensland enacts—**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Police Powers and Responsibilities and Other Legislation Amendment Act (No. 2) 2023*.

### **2 Commencement**

The following provisions commence on a day to be fixed by proclamation—

- (a) sections 5 and 6;
- (b) part 4;
- (c) part 5, division 3;
- (d) part 7;
- (e) schedule 1, part 2.

## **Part 2 Amendment of Drugs Misuse Act 1986**

### **3 Act amended**

This part amends the *Drugs Misuse Act 1986*.

*Note—*

See also the amendments in schedule 1.

### **4 Amendment of s 5 (Trafficking in dangerous drugs)**

Section 5(1), penalty, ‘25 years’—

[s 5]

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*omit, insert—*

life

## **5 Amendment of s 122A (Particular proceedings for minor drugs offences)**

(1) Section 122A(1), ‘schedule 6’—

*omit, insert—*

section 378B

(2) Section 122A(3)—

*omit, insert—*

(3) The court may, if the person is eligible under the *Police Powers and Responsibilities Act 2000*, chapter 14, part 4, division 5 to be offered an opportunity to participate in a drug diversion assessment program within the meaning of that Act, order the person to participate in, and complete, a drug diversion assessment program as directed by a police officer.

(3A) For working out whether the person is eligible under the *Police Powers and Responsibilities Act 2000*, chapter 14, part 4, division 5—

(a) section 378A(1)(d) of that Act applies as if a reference to a police officer were a reference to the court; and

(b) sections 379(1)(a) and (4) and 379AA(4) of that Act do not apply.

(3) Section 122A(4), ‘attend’—

*omit, insert—*

participate in

(4) Section 122A(5), ‘attendance at’—

*omit, insert—*

participation in



- (5) Section 122A(3A) to (6)—  
*renumber* as section 122A(4) to (7).

**6 Amendment of s 122B (Provision of information to court)**

- (1) Section 122B(1), ‘attend a drug diversion assessment program,’—  
*omit, insert*—  
participate in a drug diversion assessment program as mentioned in the order,
- (2) Section 122B(1)(a), ‘attendance at’—  
*omit, insert*—  
participation in
- (3) Section 122B(1)(b), ‘attend’—  
*omit, insert*—  
participate in
- (4) Section 122B(2), before ‘program’—  
*insert*—  
assessment

**Part 3 Amendment of Fire and  
Emergency Services Act 1990**

**7 Act amended**

This part amends the *Fire and Emergency Services Act 1990*.

*Note*—

See also the amendments in schedule 1.

[s 8]

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**8 Amendment of s 64 (Prohibition by commissioner against lighting of fires)**

(1) Section 64(2)—

*omit, insert—*

(2) An occupier of land may ask the commissioner to give a notice under subsection (1) to an occupier of adjoining land.

(2A) The request must be made in the way, and include the information, prescribed by regulation.

(2B) The commissioner must consider the request unless the commissioner believes the request is frivolous or vexatious.

(2) Section 64(2A) to (3)—

*renumber* as section 64(3) to (5).

**9 Amendment of s 65 (Granting of permits)**

(1) Section 65(1), '(orally or in writing)'—

*omit.*

(2) Section 65—

*insert—*

(1A) The application—

(a) may be made orally or in writing; and

(b) must include the information prescribed by regulation.

(3) Section 65(3)—

*omit, insert—*

(3) Subject to subsection (5), the commissioner must refuse to grant a permit to light a fire on any land unless satisfied that—

- 
- (a) reasonable steps have been taken to notify each occupier of adjoining land of the making of the application; and
- (b) each occupier of adjoining land notified under paragraph (a) has been given a reasonable opportunity to object, orally or in writing, to the granting of the permit.
- (4) Section 65(4), ‘subsection (3)’—  
*omit, insert*—  
subsection (4)
- (5) Section 65—  
*insert*—  
(5) In this section—  
*occupier of adjoining land* see section 64(5).
- (6) Section 65(1A) to (5)—  
*renumber* as section 65(2) to (6).

## 10 Insertion of new s 150BA

After section 150B—

*insert*—

### **150BA Assault of persons performing functions or exercising powers**

- (1) A person must not assault another person performing a function or exercising a power under this Act.

Maximum penalty—100 penalty units or 6 months imprisonment.

- (2) In this section—

*assault* has the meaning given by the Criminal Code, section 245.

[s 11]

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**11 Amendment of s 150C (Obstruction of persons performing functions)**

- (1) Section 150C, heading, after ‘functions’—

*insert—*

**or exercising powers**

- (2) Section 150C(1), from ‘(an *authorised person*)’ to ‘this Act’—

*omit, insert—*

performing a function or exercising a power under this Act (an *authorised person*)

- (3) Section 150C(2), after ‘function’—

*insert—*

or the exercise of the power

- (4) Section 150C(3), definition *function*—

*omit.*

- (5) Section 150C(3), definition *obstruct*, ‘assault,’—

*omit.*

- (6) Section 150C, note—

*omit.*

**Part 4 Amendment of Penalties and Sentences Act 1992**

**12 Act amended**

This part amends the *Penalties and Sentences Act 1992*.

**13 Amendment of s 15C (Meaning of *eligible drug offender*)**

- (1) Section 15C(4)(a)(ii), after ‘agreed’—

*insert—*

to an offer

- (2) Section 15C(4)(a)(ii), ‘section 379’—  
*omit, insert—*  
section 379AA

## **Part 5**                      **Amendment of Police Powers and Responsibilities Act 2000**

### **Division 1**                **Preliminary**

#### **14**      **Act amended**

This part amends the *Police Powers and Responsibilities Act 2000*.

### **Division 2**                **Amendments commencing on assent**

#### **15**      **Amendment of s 754 (Evasion offence)**

- (1) Section 754(2), maximum penalty—  
*omit, insert—*  
Maximum penalty—  
(a) if a circumstance of aggravation under subsection (3) applies—300 penalty units or 5 years imprisonment; or  
(b) otherwise—200 penalty units or 3 years imprisonment.
- (2) Section 754—  
*insert—*  
(2A) For subsection (2), maximum penalty, paragraph

[s 16]

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(a), it is a circumstance of aggravation that—

(a) the offence is committed in the night; or

(b) the offender—

(i) uses or threatens to use actual violence;  
or

(ii) is or pretends to be armed with a  
dangerous or offensive weapon,  
instrument or noxious substance; or

(iii) is in company with 1 or more persons;  
or

(iv) damages, or threatens or attempts to  
damage, any property; or

(v) has been previously convicted under  
this section or the Criminal Code,  
section 328A, 408A or 427.

(2B) An offence against subsection (2) with a  
circumstance of aggravation under subsection (3)  
is a misdemeanour.

(3) Section 754(2A) to (7)—

*renumber* as section 754(3) to (9).

## 16 Insertion of new s 754A

After section 754—

*insert*—

### **754A Proceedings for particular offences against s 754**

(1) A charge of an offence against section 754(2)  
with a circumstance of aggravation under section  
754(3) must be heard and decided summarily if  
the prosecution elects to have the charge heard  
and decided summarily.

(2) The maximum penalty that may be imposed on a

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summary conviction for an offence against section 754(2) with a circumstance of aggravation under section 754(3) is 3 years imprisonment.

- (3) The Magistrates Court must abstain from dealing summarily with a charge of an offence against section 754(2) with a circumstance of aggravation under section 754(3) if satisfied, at any stage and after hearing any submissions by the prosecution and defence, that because of the nature or seriousness of the offence or any other relevant consideration the defendant, if convicted, may not be adequately punished on summary conviction.
- (4) If the Magistrates Court abstains from jurisdiction—
  - (a) the court must stop treating the proceeding as a proceeding to hear and decide the charge summarily; and
  - (b) the proceeding for the charge must be conducted as a committal proceeding; and
  - (c) a plea of the defendant at the start of the hearing must be disregarded; and
  - (d) the evidence already heard by the court is taken to be evidence in the committal proceeding; and
  - (e) the *Justices Act 1886*, section 104 must be complied with for the committal proceeding.

**17 Amendment of s 756 (Who may be prosecuted for type 1 vehicle related offence if no response to type 1 vehicle related offence notice)**

Section 756(8), after ‘offence against’—

*insert—*

section 754(2) with a circumstance of aggravation under section 754(3) or

[s 18]

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## **Division 3**                      **Amendments commencing by proclamation**

### **18**      **Insertion of new ch 14, pt 4, div 1, hdg**

Before section 375—

*insert—*

#### **Division 1                      Preliminary**

### **19**      **Insertion of new ch 14, pt 4, div 2, hdg**

Before section 376—

*insert—*

#### **Division 2                      General rule**

### **20**      **Insertion of new ch 14, pt 4, div 3, hdg**

Before section 377—

*insert—*

#### **Division 3                      Additional case for adult—alternatives to arrest**

### **21**      **Insertion of new ch 14, pt 4, div 4, hdg**

Before section 378—

*insert—*

#### **Division 4                      Additional case—intoxication**



**22 Replacement of s 379 (Additional case when arrest for minor drugs offence may be discontinued)**

Section 379—

*omit, insert—*

**Division 5 Additional case—minor drugs offence**

**378A Application of division**

- (1) This division applies if—
- (a) a person is arrested for, or is being questioned by a police officer about, a minor drugs offence; and
  - (b) the person has not committed another indictable offence in circumstances that are related to the minor drugs offence; and

*Examples of commission of an offence in circumstances related to a minor drugs offence—*

- burglary of a home to obtain money to buy dangerous drugs or S4 or S8 medicines the subject of the minor drugs offence
  - the dangerous drugs or S4 or S8 medicines the subject of the minor drugs offence are obtained as a result of the robbery of another person
  - possessing another dangerous drug or S4 or S8 medicine of a quantity that is more than the prescribed quantity under section 378B
- (c) the person has not previously been sentenced to serve a term of imprisonment for an offence against the *Drugs Misuse Act 1986*, section 5, 6, 8 or 9D; and
  - (d) a police officer reasonably believes each minor drugs matter the subject of the minor drugs offence was for the person's personal use.

[s 22]

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- (2) For subsection (1)(b), a reference to another indictable offence does not include another minor drugs offence that is an indictable offence.

### **378B Meaning of *minor drugs offence***

- (1) A *minor drugs offence* is—
- (a) an offence against the *Drugs Misuse Act 1986*, section 9 involving possessing not more than the prescribed quantity of a dangerous drug; or
  - (b) an offence against the *Drugs Misuse Act 1986*, section 10(1), (2), (4) or (4A) or 10A(1)(a), (b) or (c) involving possessing a thing for use, or that has been used, for the administration, consumption or smoking of a dangerous drug; or
  - (c) an offence against the *Medicines and Poisons Act 2019*, section 34(1) involving possessing not more than the prescribed quantity of an S4 or S8 medicine.
- (2) However, a *minor drugs offence* does not include an offence mentioned in subsection (1)(a) or (b) if the possession relates to an offence by the same person against the *Drugs Misuse Act 1986* involving production or supply of a dangerous drug or trafficking in a dangerous drug.
- (3) Also, a *minor drugs offence* does not include an offence mentioned in subsection (1)(c) if the possession relates to an offence by the same person against the *Medicines and Poisons Act 2019* involving dealing with, manufacturing or supplying an S4 or S8 medicine.
- (4) In this section—
- prescribed quantity***, of a dangerous drug or S4 or S8 medicine, means a quantity of the drug or

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medicine prescribed under a regulation for this section.

### **378C Drug diversion warning**

- (1) This section applies if the person—
  - (a) has not previously been offered an opportunity to participate in a drug diversion assessment program under section 379 or 379AA, whether before or after the commencement of this section; and
  - (b) has not previously been offered a drug diversion warning.
- (2) If the person is an adult, a police officer must offer to give the person a drug diversion warning.
- (3) If the person is a child, a police officer may offer to give the person a drug diversion warning.
- (4) A police officer may make the offer at any time before the person appears before a court to answer a charge of the minor drugs offence.
- (5) When making the offer, the police officer must explain the nature and effect of the drug diversion warning—
  - (a) to the person; and
  - (b) if a support person is present when the offer is made—to the support person.
- (6) If the person agrees to being given a drug diversion warning, the police officer must give the person a written notice stating the following—
  - (a) that a drug diversion warning was given to the person;
  - (b) the time and date the warning was given;
  - (c) the person's name;
  - (d) the police officer's name and rank;

[s 22]

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- (e) the particulars of the minor drugs offence;
  - (f) the nature and effect of the warning.
- (7) On the giving of the drug diversion warning, the minor drugs matter the subject of the minor drugs offence is forfeited to the State.
- (8) If the person is an arrested person, it is the duty of a police officer to release the person at the earliest reasonable opportunity after the police officer has given the person a drug diversion warning.

### **379 Initial drug diversion assessment program**

- (1) This section applies if the person—
- (a) has previously been offered a drug diversion warning; and
  - (b) has not previously been offered the opportunity to participate in a drug diversion assessment program under this section, whether before or after the commencement of this section.
- (2) If the person is an adult, a police officer must offer the person the opportunity to participate in a drug diversion assessment program.
- (3) If the person is a child, a police officer may offer the person the opportunity to participate in a drug diversion assessment program.
- (4) A police officer may make the offer at any time before the person appears before a court to answer a charge of the minor drugs offence.
- (5) When making the offer, the police officer must explain the nature and effect of the drug diversion assessment program—
- (a) to the person; and
  - (b) if a support person is present when the offer is made—to the support person.

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### **379AA Subsequent drug diversion assessment program**

- (1) This section applies if the person—
  - (a) has previously been offered the opportunity to participate in a drug diversion assessment program under section 379, whether before or after the commencement of this section; and
  - (b) has not previously been offered the opportunity to participate in a drug diversion assessment program under this section.
- (2) If the person is an adult, a police officer must offer the person the opportunity to participate in a subsequent drug diversion assessment program.
- (3) If the person is a child, a police officer may offer the person the opportunity to participate in a subsequent drug diversion assessment program.
- (4) A police officer may make the offer at any time before the person appears before a court to answer a charge of the minor drugs offence.
- (5) When making the offer, the police officer must explain the nature and effect of the drug diversion assessment program—
  - (a) to the person; and
  - (b) if a support person is present when the offer is made—to the support person.

### **379AB Drug diversion agreement**

- (1) If the person agrees to an offer made under section 379 or 379AA, the person must sign an agreement (a *drug diversion agreement*) to participate in, and complete, a drug diversion assessment program.
- (2) The drug diversion agreement must include a

[s 22]

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provision authorising the provider of the drug diversion assessment program to disclose to the commissioner information about—

- (a) the person's participation in, and completion of, the program; or
  - (b) if the person failed to participate in, or complete, the program—the person's failure to participate in, or complete, the program.
- (3) The police officer must—
- (a) give the person a written requirement to participate in, and complete, a drug diversion assessment program in accordance with the drug diversion agreement; and
  - (b) inform the person that failure to comply with the requirement is an offence against section 791.
- (4) Also, the police officer must give the chief executive (health), or a person or organisation nominated by that chief executive for this section, a copy of the drug diversion agreement.
- (5) On the signing of the drug diversion agreement, the minor drugs matter the subject of the minor drugs offence is forfeited to the State.
- (6) If the person is an arrested person, it is the duty of a police officer to release the person at the earliest reasonable opportunity after the police officer is satisfied subsections (1) and (3) have been complied with.

## **Division 6                      Additional case for child—graffiti offence**

**23 Insertion of new ch 14, pt 4, div 7, hdg**

Before section 380—

*insert—*

**Division 7 Further general rule for  
child**

**24 Amendment of s 380 (Additional case when arrest of  
child may be discontinued)**

(1) Section 380, heading, ‘Additional case when’—

*omit, insert—*

**When**

(2) Section 380—

*insert—*

(7) If the offence in relation to which the child is arrested is a minor drugs offence and the police officer decides to act as mentioned in subsection (3)(a) or (b), the minor drugs matter the subject of the offence is forfeited to the State.

**25 Insertion of new ch 14, pt 4, div 8, hdg**

Before section 381—

*insert—*

**Division 8 Limit on rearrest**

**26 Amendment of s 394 (Duty of police officer receiving  
custody of person arrested for offence)**

(1) Section 394(2)(c)—

*omit, insert—*

[s 27]

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- (c) for a person arrested for being intoxicated in a public place—decide whether to discontinue the arrest under section 378; or
  - (caa) for a person arrested for a minor drugs offence—decide whether to discontinue the arrest under part 4, division 5; or
- (2) Section 394(2)(caa) to (d)—  
*renumber* as section 394(2)(d) to (f).
  - (3) Section 394(3), ‘or 379’—  
*omit, insert*—  
or part 4, division 5

**27 Amendment of s 490 (When DNA sample taken from suspected person and results must be destroyed)**

Section 490(1)(a), ‘379(6)’—

*omit, insert*—

chapter 14, part 4, division 5

**28 Amendment of sch 6 (Dictionary)**

- (1) Schedule 6, definition *minor drugs offence*—

*omit.*

- (2) Schedule 6—

*insert*—

***drug diversion agreement*** see section 379AB(1).

***drug diversion warning*** means a warning given under section 378C.

***minor drugs matter***, in relation to a minor drugs offence, means any of the following—

- (a) a dangerous drug;
- (b) an S4 or S8 medicine;



- (c) a thing for use, or that has been used, for the administration, consumption or smoking of a dangerous drug.

*minor drugs offence* see section 378B.

*S4 medicine* see the *Medicines and Poisons Act 2019*, section 11(1)(c).

*S8 medicine* see the *Medicines and Poisons Act 2019*, section 11(1)(d).

- (3) Schedule 6, definition *enforcement act*, paragraph (k), ‘section 379’—

*omit, insert*—

chapter 14, part 4, division 5

## Part 6 **Amendment of Police Service Administration Act 1990**

### 29 **Act amended**

This part amends the *Police Service Administration Act 1990*.

*Note*—

See also the amendment in schedule 1.

### 30 **Amendment of s 5.2 (Appointment to be on merit on impartial procedures)**

- (1) Section 5.2(2), ‘person as a police recruit or to a police officer position’—

*omit, insert*—

person, other than an executive officer, as a police recruit or to a police officer position, or to appoint an executive officer to a police officer position or rank,

- (2) Section 5.2(5)(b) and (d) and (6), after ‘position’—



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*minor drugs matter* see the *Police Powers and Responsibilities Act 2000*, schedule 6.

*minor drugs offence* see the *Police Powers and Responsibilities Act 2000*, section 378B.

### **33 Amendment of s 168 (Meaning of *eligible child*)**

(1) Section 168(4)(a)(ii), after ‘agreed’—

*insert—*

to an offer

(2) Section 168(4)(a)(ii), ‘section 379’—

*omit, insert—*

section 379AA

## **Part 8 Other amendments**

### **34 Legislation amended**

Schedule 1 amends the legislation it mentions.

## **Schedule 1      Other amendments**

section 34

### **Part 1                      Amendments commencing on assent**

#### **Fire and Emergency Services Act 1990**

**1            Section 53, heading, after ‘authorised’—**

*insert—*

**fire**

**2            Section 55(1)(e), after ‘authorised’—**

*insert—*

**fire**

**3            Section 58A(1), ‘the authorised officer’—**

*omit, insert—*

**the officer**

**4            Section 104I(5), (7), (7A), (8) and (10), ‘authorised  
officer’—**

*omit, insert—*

**authorised fire officer**

## **Fire and Emergency Services Regulation 2011**

**1 Section 4, heading, ‘s 64(2)’—**

*omit, insert—*

**s 64**

**2 Section 5, heading, ‘s 65(1)’—**

*omit, insert—*

**s 65**

## **Part 2 Amendments commencing by proclamation**

### **Bail Act 1980**

**1 Section 14(1B)(b), from ‘schedule 6’—**

*omit, insert—*

section 378B is given a drug diversion warning, or signs a drug diversion agreement, under that Act.

### **Drugs Misuse Act 1986**

**1 Section 122C(1), ‘attended’—**

*omit, insert—*

participated in

**2 Section 122C(2), ‘attend’—**

*omit, insert—*

participate in

## **Justice and Other Information Disclosure Act 2008**

**1 Schedule, definition *person in the criminal justice system*, paragraph (f)—**

*omit, insert—*

(f) a person to whom a police officer has offered a drug diversion warning or an opportunity to participate in a drug diversion assessment program under the *Police Powers and Responsibilities Act 2000*, chapter 14, part 4, division 5; or

## **Police Service Administration Act 1990**

**1 Section 10.1(1)(d), from ‘attend’ to ‘section 379’—**

*omit, insert—*

participate in a drug diversion assessment program under the *Police Powers and Responsibilities Act 2000*, section 379 or 379AA

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